

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**MISSOURI REAL ESTATE COMMISSION**  
**AND**  
**DIANE M. HASTINGS**

Diane M. Hastings ("Hastings") and the Missouri Real Estate Commission ("MREC") enter into this Settlement Agreement for the purpose of resolving the question of whether Hastings's license as a broker, no. 1999016525 and license as a broker associate, no. 1999022996, are subject to discipline. Pursuant to § 536.060, RSMo 2000,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo Supp. 2013. The MREC and Hastings jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2013.

Hastings acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against her at

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<sup>1</sup> All statutory citations are to the 2000 Revised Statutes of Missouri as amended unless otherwise noted.

the hearing; the right to present evidence on her behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against her; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Hastings may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to her by law, Hastings knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to her.

Hastings acknowledges that she has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Hastings stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Hastings's license as a broker, license no. 1999016525 and license as a broker associate, no. 1999022996, are subject to disciplinary action by the MREC in

accordance with the relevant provisions of Chapters 621, RSMo, and 339, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Hastings in Part II herein is based only on the agreement set out in Part I herein. Hastings understands that the MREC may take further disciplinary action against her based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

# **I.**

## **Joint Stipulation of Facts and Conclusions of Law**

Based upon the foregoing, the MREC and Hastings herein jointly stipulate to the following:

1. Diane Hastings is a broker and broker associate licensed by the MREC, license nos. 1999016525 and 1999022996 respectively. At all relevant times herein, Hastings' broker license was current and active.

2. From May through August, 2014, an audit was conducted of Hastings' business practices. In the course of the audit, it was discovered that:

a) Hastings stated she left her management fees in the property management escrow account, Bank of America, account number #xxxx1521. However, checks were written on the account and debit

card purchases made from this account to such entities as Price Chopper, Pierce Medical Clinic, Quiktrip, HyVee, Pilot, Mayfair Cleaners, Macy's, Sophia Nails, Walgreens, Wendy's, DQ, Hilton Garden Inn, Sheridans, Green Lantern, Jack Stack, Loves Travel, Mr. Sushi, Great clips, Delta Air, KFC, Red Robin, Amazon Marketplace, Taco Bell, Stuffies, the Oliver Garden, Subway, Dicks Clothing, Dollar Store, Apple Bees, Ming Dragon, Dave May (car repair), Houstons Computers, and Dr. Evans, which were not related to property and were for personal expenditures.

b) Escrow bank account, U.S. Bank, number #xxxx8677, which held funds of owner Sukhdev Dail was titled in the name of Brian J. Hastings and Diane M. Hastings, Brian being Hastings' son. Names on the checks for the account included Sukhdev Dail and Diane M. Hastings, however Hastings stated that her son did not have signing rights on the account.

c) Escrow bank account, U.S. Bank, number #xxxx4442, which holds funds of multiple owners, is titled in the name of "Henrik Jenson, d/b/a KCREA Investments." The account was used to hold rents belonging to Henrik Jensen and twenty plus other owners. Hastings stated that both she and Henrik Jensen were signers on the account.

d) From the same account, no.xxxxx4442, Hastings stated that she left management fees in the account to cover personal expenses. Checks were written and debit card purchases were made to such entities as Trivita Inc., PP Q Sciences, Dressbarn, Pierce Medical, Sample Shipping, Fairmont Hotel, Worlds of Fun, Premier nails, Solavie, Fuji Japanese, GH Associates, Great Clips, Sams Club, Advance Auto Parts, Dicks Clothing, Massage Heights, Quality Auto Parts, Justise, Amazon.com, Frontier Airlines, UMKC School, KCI Auto Park, Straighttalk, MSFT XBOX and Liberty 12 Cinema, none of which Hastings confirmed were related to a property and were personal expenses.

e) On multiple occasions, Hastings wrote checks when the fund owner's balance was insufficient, resulting in insufficient funds and temporary shortages to the account:

- i. On a February 7, 2014 bank statement for U.S. Bank account no. xxxx8677 had an instance of a returned check charge on the account.
- ii. On a May 31, 2013 bank statement for U.S. Bank account no. xxxxx3111 had six instances of returned check charges on the account.

- iii. On a October 31, 2013 bank statement for U.S. Bank account no. xxxxx3111 there were seven instances of returned check charges on the account.
- f) Hastings was unable to reconcile property management escrow accounts due to keeping management fees, personal expenditures and owner balances in the same account without adequate records, but Hastings was able to identify shortages in the account.
  - i. In U.S. Bank account no. #xxxxx1521, there was an estimated shortage of \$7,000 due to non-property related expenses paid out of the account, a shortage of \$173.30 due to an unknown debit from the account and a shortage of \$606 due to bank fees paid and no broker funds.
  - ii. The following were identified shortages in the listed escrow accounts due to bank fees paid on accounts with no broker funds: U.S. Bank account no. xxxx9568, \$34.95; U.S. Bank account no. xxxx3111, \$1,292, and U.S. Bank account no. xxxx8677, \$430.
- g) Hastings also had shortages in U.S. Bank account no. xxxx4442, which were as follow: \$2,548.60 due to bank fees charged against the account, \$30,035 for security deposits to be held by the broker per lease

agreements, \$474.38 due to expenditures not booked to an owner, and at least \$17,000 due to non-property related expenses paid out of the account.

h) Overages were also identified in U.S. Bank account no. xxx4442 of \$600 due to an unidentified deposit to the related owner and tenant credit and an identified overage of \$1,794.80 for management fees not removed.

i) Hastings had numerous instances of commingling in the property management escrow account. These instances arose from Hastings leaving management fees in the property management escrow account, paying personal and brokerage bills out of the property management account, and depositing Hastings personal funds into the same accounts.

j) Hastings failed to maintain adequate records for the following property management escrow accounts:

- i. Bank of America account no. xxxx1521
- ii. U.S. Bank account no. xxxx8677
- iii. U.S. Bank account no. xxxx9568
- iv. U.S. Bank account no. xxxx5442
- v. U.S. Bank account no. xxxx3111

k) Hastings also managed the following properties without an agreement:

- i. 2904 E 52<sup>nd</sup> St, Kansas City, Mo
- ii. 5734 Olive, Kansas City, Mo
- iii. 3109 E 11<sup>th</sup> St, Kansas City, Mo
- iv. 5814 Brooklyn, Kansas City, Mo
- v. 10208 E 63 Ter, Raytown, Mo

l) Hastings acted as an agent of both the seller and buyer without obtaining a written agency agreement, which noted her representation of both in the sale and purchase of the property located at 3419 Norton, Kansas City, Mo. Hastings also acted as the agent for a buyer without a written agency agreement in the purchase of 3627 Brooklyn, Kansas City, Mo.

3. Section 339.105.1 and .3, RSMo, states concerning separate escrow accounts:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account



from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

. . . . .

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

4. Regulation 20 CSR 2250-8.220(1), states concerning escrow accounts:

(1) A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for that owner's(s') property(ies) is sufficient to cover the disbursements.

5. Regulation 20 CSR 2250-8.120(4), states concerning commingling funds:

(4) Each broker shall deposit into the escrow or trust account all funds coming into the broker's possession as set out in section 339.100.2(1), RSMo, including funds in which the broker may have some future interest or claim and including, but not limited to, earnest money deposits, prepaid rents, security deposits, loan proceeds and funds paid by or for the parties upon closing of the transaction. No broker shall

commingle personal funds or other funds in the broker's escrow account except to the extent provided by section 339.105.1, RSMo. Commissions payable must be removed from the escrow account at the time the transaction is completed. After the transaction is completed, interest payable shall be disbursed to the appropriate party(ies) from the escrow account no later than ten (10) banking days following the receipt of the next statement of the escrow account. When the licensee receives all interest earned, interest payable to a licensee must be removed from the escrow account within ten (10) banking days following the receipt of the next statement of the escrow account.

6. Regulation 20 CSR 2250-8.200(1) states concerning property management agreements:

(1) When managing property a licensee shall not rent or lease, offer to rent or lease, negotiate, or offer or agree to negotiate, the rent or lease, list or offer to list for lease or rent, assist or direct in procuring of prospects calculated to result in the lease or rent, assist or direct in the negotiation of any transaction calculated or intended to result in the lease or rent, or show that property to prospective renters or lessees unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent.

7. Section 339.780.2, RSMo, states concerning written agreements for property management:

2. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to establish a limited agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 339.730 and the terms

of compensation and shall specify whether an offer of subagency may be made to any other designated broker.

8. Section 339.100.2, RSMo, states in pertinent part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to her or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

.....

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860\*, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860\*;

.....

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

9. In violation of Section 339.780.2, RSMo, and 20 CSR 2250-8.200(1), Hastings managed properties without an agreement conduct which demonstrated improper business dealings. Thus, cause exists to discipline his license pursuant to Section 339.100.2(15) and (19), RSMo, Supp. 2013.

10. In violation of Section 339.105, RSMo, and the lawful rules 20 CSR 2250-8.120 and 20 CSR 2250-8.220, Hastings failed to maintain adequate records of an escrow account and commingled personal and brokerage funds within said account. This conduct represents improper business dealings. Thus, cause exists to discipline Hastings' license pursuant to 339.100.2(1), (15), and (19), RSMo, Supp. 2013

## II.

### **Joint Agreed Disciplinary Order**

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo Supp. 2013.

**Hastings' license is revoked and all indicia of licensure shall be surrendered immediately.** Hastings's license as a broker is hereby REVOKED and ALL INDICIA of licensure SHALL BE SURRENDERED IMMEDIATELY upon this Settlement Agreement becoming effective.

11. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Hastings of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

12. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered.

13. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

14. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

15. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

16. Hastings, together with her partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

17. Hastings understands that she may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Hastings's license. If Hastings desires the Administrative

Hearing Commission to review this Settlement Agreement, Hastings may submit her request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

18. If Hastings requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Hastings's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Hastings as allowed by law. If Hastings does not request review by the Administrative Hearing Commission, then this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEE

Missouri Real Estate Commission

<u>Diane M. Hastings</u>	<u>12/31/15</u>	<u>Joseph Denkler</u>
Diane M. Hastings	Date	Joseph Denkler/Executive Director
		Date: <u>1/7/2016</u>

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